

DETAILED ACTION

Applicants' arguments in the Request for Continued Examination, filed June 21, 2011, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 103 – Obviousness

Claims 23-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kohl et al. (USP 3,681,091) as evidenced by Grunberg et al. (Scandinavian Journal of Nutrition/Naringsforskning).

Grunberg et al. was previously used as evidence to support apple juice is imbibed daily and now added to rejection line (see Office Action mailed October 27, 2010). This does not however change the basis of the rejection.

Applicant's Arguments

Applicant argues that the claims have been amended to recite that the physician or dental professional directs the use of the beverage composition for the purpose of treating dental erosion.

Examiner's Response

Although the claims are amended, the instant claims read on an individual imbibing the apple juice of Kohl for other purposes. The claims also still encompass all individuals with natural teeth who drink acidic beverages everyday, such as acidic beverages of the prior art, as indicated in the Board Decision page 7, paragraph 2.

The recitation of "a physician or dental professional directing a human" encompasses printed subject matter or instruction. This is supported by the instant specification and Applicant's remarks on page 5 of 6, which discusses the different ways a mammal may be directed or instructed to consume the compositions of the instant claims. The amending of the claims to recite "for the purpose of treating dental erosion" does not distinguish the claims or further limit them because the direction from a physician or dental directing a human for the purpose of treating dental erosion still encompasses printed subject matter or instruction

USPTO personnel may not disregard claim limitations comprised of printed matter. However, USPTO personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See MPEP 2106.01. When interpreting the instant claims, the instant claims would encompass all humans with natural teeth because all individuals with

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natural teeth are in need of the treatment of tooth erosion. Therefore any individual with natural teeth drinking the juice of Kohl everyday would be using the method recited by the instant claims. Therefore it does not appear the direction has a new and unobvious functional relationship between the direction and the method of treating dental erosion because anyone with natural teeth drinking the juice of Kohl would be following the method recited in the instant claims. In regard to step (b), the teachings of Kohl encompass those humans that drink apple juice every day and Grunberg (disclosed previously to support that a population drinks apple juice everyday) supports that a population of humans consume juices such as apple juice every day. Therefore Kohl meets the limitations of the instant claims, and the claims still fail to distinguish the recited beverage from a beverage which a consumer would drink everyday such as the apple juice disclosed by the reference.

Claims 23-31 are rejected.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/
Examiner, Art Unit 1612